IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2826 of 2005
Date of decision: October 13, 2006.

M/s Sood Enterprises

...**Petitioner(s)**

v.

Union of India & Ors.

...**Respondent(s)**

Present: Shri Rakesh Garg, Advocate for the appellant.

Surya Kant, J. (Oral)

This regular second appeal is preferred by the plaintiff whose suit for declaration and permanent injunction, has been dismissed by both the courts.

[2]. The appellant is an approved contractor of the Union of India for the MES, Bhatinda Cantonment. The suit was filed by it alleging, *inter-alia*, that the deduction of sum of Rs.7,01,297.57p sought to be made by the respondent-authorities vide memo dated 21.5.1999 is illegal, null and void and the said memo was not binding upon the rights of the appellant.

[3]. According to the appellant, the work which pertained to the provision of Essential OTM accommodation for certain units at Bhatinda worth Rs.77,30,837.28p, was allotted to it vide contract No.CE/BTZ-9/90/91. The work was allegedly executed within the stipulated period and thereafter on 28.3.1992, final bill for a sum of Rs.3,83,058/- was prepared by respondent No.2 and was subsequently signed by the appellant and

submitted for payment. However, no payment was made in terms of the final bill and after adjusting it against the alleged total recoverable amount, a sum of Rs.3,21,207/- was sought to be recovered from the appellant. This led to filing of the present suit.

[4]. On consideration of the evidence on record, both the courts have dismissed the appellant's suit.

[5]. Aggrieved, the plaintiff has preferred this regular second appeal.

[6]. I have heard Shri Rakesh Garg, learned counsel, at length and have perused the impugned judgments.

[7]. Though, Learned Counsel vehemently contends that once the final bill was prepared on 28.3.1992 and in terms thereof the appellant was held entitled to for a sum of Rs.3,83,058/-, no recovery could be effected from it after the expiry of the period of two years. However, as noticed by the courts below, the payment in terms of the final bill was never made to the appellant and Clause (VII) of the General Conditions of the Contract entitled the respondents to recover or adjust any sum found due from the contractor. Similarly, such recovery could be adjusted against the security deposit or security bonds amount also. There is hardly any serious dispute between the parties that on account of a judgment passed by this court, minimum wages payable to the unskilled workers stood revised and the liability to pay the same in terms of the contract, though, was upon the appellant-contractor, but the same was discharged by the respondent-authorities, therefore, to the extent of the excess payment of labour charges to the unskilled workers, the respondents sought to effect recovery from the appellant. It was in this backdrop that the amount of final bill, i.e.

Rs.3,83,058/- was also adjusted towards the said payment.

[8]. As the facts, noticed above, would speak for themselves, there is a pure and simple concurrent finding of fact by the courts below which does not give rise to any substantial question of law warranting interference by this court.

[9]. Consequently, I do not find any merit in this appeal which is, accordingly, dismissed.

October 13, 2006. [**Surya Kant**]
kadyan **Judge**